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Washington, DC 20036

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Nessa E. Feddis
Senior Federal Counsel
Regulatory and Trust Affairs

Tel: (202)663-5433
Fax: (202)828-5052
nfeddis@aba.com

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By electronic delivery

Ms. Jennifer J. Johnson,
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

***Regulation E
Electronic Fund Transfer Act
Docket No. R-1247
Federal Register 10 January 2006***

The American Bankers Association ("ABA") is pleased to submit our comments to the Federal Reserve Board's ("Board") request for comment on its interim final rule regarding Regulation E's (Electronic Fund Transfer Act) application to payroll card accounts.

Under the interim final rule, the Board specifically covers payroll accounts under Regulation E, but permits an alternative to providing a periodic statement. We commend the Board's flexibility in adjusting the regulation to better fit this emerging and popular product. We believe that it is appropriate and necessary to make such adjustments in order to encourage the development and promotion of payroll products which help to bring into the banking system those who might not otherwise have bank accounts. We believe that such modifications are critical, first, to be more practical and reflect actual consumer preferences and habits, and second, to avoid unnecessary expenses and costs that ultimately are reflected in the price of the product. Overall, we agree with the Board's approach, but make several suggestions.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Definition of “account.”

Under the interim final rule, the Board adds to the definition of account, payroll card accounts. Specifically, it provides that “account” includes:

“[A] payroll card account” directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person.

We recommend that the Board broaden the definition by eliminating the condition that the account be “established by an employer” and instead distinguish the accounts based on the feature that the account is funded exclusively by recurring electronic fund transfers. The types of fund transfers should include not only salary related recurring items, but also recurring benefits.

As drafted, the only distinction between a standard checking account that accepts direct deposit of wages and a payroll account is that it is established by an employer, a somewhat artificial distinction that excludes other payroll accounts that should be covered. For example, it is feasible that an institution that is not a depository institution could offer an account that functions basically as a payroll account without the involvement of the employer. The institution could direct consumers to arrange for their employer to directly deposit wages into an account held by the institution and allow the consumer to access the funds through a card issued by the institution. It is not clear whether the account would be covered under Regulation E as it may not technically be a “consumer account.” We believe that such accounts should have Regulation E protections.

In addition, the definition should not be limited to accounts established by an employer because other alternative payroll accounts should have the same option with regard to periodic statements as those offered through employers. For example, some banks offer directly to consumers payroll accounts to which wages are directly deposited into the account. No other funds may be deposited and funds may only be accessed via a debit card.

Such accounts are valuable to those who might not otherwise be interested in or eligible for a regular checking account and those whose employers do not offer the payroll account option. It allows those without bank accounts to avoid the inconvenience of cashing checks and the risk of carrying large amounts of cash and allows access to funds through a debit card. As the Board notes in its Supplementary Information on page

1476 of the 10 January *Federal Register*, “A significant number of participants believed that receiving pay on payroll cards is more convenient than receiving a paper paycheck each pay period.” An additional advantage of depository account-offered accounts is that account holders changing employers retain the same account and card.

For similar reasons, we believe that accounts that function similarly to payroll accounts that are funded from government benefits should be treated as payroll accounts are. Many recipients of government benefits continue to receive paper checks, some because they are not eligible or have difficulty managing a checking account. Accounts that limit deposits to recurring directly deposited government benefits may be a good option for these people: the accounts are more manageable and the account holders avoid the inconvenience of having to cash checks and enjoy the convenience of accessing funds through a debit card.

Moreover, we do not believe that periodic statements are necessary or likely to be used by those holding accounts exclusively funded by wage or benefit related recurring electronic fund transfers. The Board notes in the Supplementary Information that in the focus group of payroll account holders:

The majority of focus group participants regularly checked their balances over the telephone, or checked balance and transaction information online. . . For those participants who received paper periodic statements, most stated that they generally filed their statements as a record of account activity, but otherwise rarely used them to track transactions or look for errors. (Page 1476, *Federal Register* 10 January 2006.)

We believe that those choosing to use a payroll account or similarly structured government benefits account offered directly by a depository institution would behave similarly.

Allowing the alternative to periodic statements will make such accounts more feasible as a business matter and therefore more available, especially to those who currently do not have bank accounts. Accordingly, we strongly recommend that the Board expand the types of accounts covered to include those funded exclusively by direct deposit of recurring government benefits, eliminate the requirement that the account be offered by the employer, and instead distinguish the accounts based on how deposits are made:

“A payroll or government benefits card account” which may be funded only by transfers of the consumer’s government benefits, wages, salary, or other employee compensation, made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or

any other person.

Alternative to periodic statement.

The Board allows financial institutions as an option to providing a periodic statement, making available:

1. The consumer's account balance through a telephone line;
2. An electronic history, such as through an Internet Web site, of the consumer's account transactions that covers at least 60 days preceding the date the consumer electronically access the account; and
3. A written history of the consumer's account transactions that is provided in response to an oral or written request and that covers at least 60 days preceding the date of receipt of a request by the consumer.

We recommend that the Board clarify that ATM access to transaction history is an acceptable means of obtaining an electronic history. Some banks allow customers to access account history through the ATM and obtain a paper statement. This option may be more useful and convenient to customers who may not have regular access to the Internet. ATMs are generally readily available to payroll account holders and banks report that ATMs are the primary means of accessing payroll account funds. For these reasons, it should be clear that ATM access to periodic statements is an acceptable alternative.

Annual error resolution notice.

The interim final rule requires that financial institution provide an annual notice concerning error resolution. We suggest that the regulation permit financial institutions the option of providing the Section 205.8(b) abbreviated notice currently permitted on periodic statements at the ATM, for example, on the receipt or periodic statement. Consumers are more likely to read a notice on the ATM receipt or periodic statement than on an annual notice. In addition, payroll account holders are often more transient than other account holders so the notice is less likely to reach them if their address has changed. Finally, elimination of the mailing requirement may reduce the cost of offering the account.

Limitations on liability and error resolution.

The interim final rule provides that the 60-day period for reporting unauthorized transfers that appear on a periodic statement begins on the earlier of:

[T]he date the consumer electronically accesses the consumer's

account . . . provided the information about the transfer was made available to the consumer at that time; or . . . the date the financial institution sends a written history of the consumer's account transactions requested by the consumer. . .

The 60-day period applicable to the error resolution provisions is also calculated in this fashion.

We recommend that the Board begin the 60-day period applicable to both the liability limitations and error resolution at the time the information becomes available to the account holder. We see no reason for payroll account holders to have greater protections than other account holders or electronic benefit transfer account holders.

Many financial institutions permit payroll account holders access to information greater than 60 days, e.g. up to a year. Under the interim final rule, the liability and error resolution provisions would continue to apply for example, for over a year -- or more.

Allowing a lengthy and undefined time to file a dispute puts depository institutions at an unfair disadvantage: under the regulation, they must complete an investigation within set time frames, but for transactions older than 60 days, research becomes more complicated and time-consuming. For example, documents such as receipts and ATM photographs are often archived or destroyed after 60 days. Older information and documentation are simply more difficult to retrieve. Financial institutions should not be limited in their time to investigate in these older cases.

Similarly, financial institutions are put at greater risk if liability is not limited for unauthorized transactions made long after the initial unauthorized transaction, even though the consumer, not the financial institution, is in the best position to detect those unauthorized transactions. Further, consumers will have less incentive to monitor their accounts if the time periods do not begin to run until they access the account. Expanding these time periods and thus the potential liability will encourage institutions to limit access to account history to 60 days, depriving account holders of the service.

If the Board chooses to base the 60 day period on electronic access to the account, it should clarify that "access to the account" means the consumer has logged into the bank website. Banks report that while they can determine whether a customer has logged in, they cannot determine whether they actually accessed a particular account.

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ABA appreciates the opportunity to comment on this important

matter. We commend the Board for adjusting the regulations in a fashion more suitable for an emerging and important product. If we can provide additional information, please contact us.

Sincerely,

Nessa Eileen Feddis